

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Date of Decision: 10th December, 1996.

FIRST APPEAL NO. 1310 OF 1982

With

First Appeal Nos.1311 of 1982, 862 of 1983, 863 of 1983, 864 of 1983 and 943 of 1983.

For Approval and Signature:

THE HON'BLE MR. JUSTICE B.C. PATEL

And

THE HON'BLE MR. JUSTICE H.R. SHELAT.

1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether Their Lordships wish to see the fair copy of Judgment ?
4. Whether this case involves substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judge?

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First Appeal No. 1310 of 1982:

Shantaben,

W/o. of Babubhai Patel & Others. : Appellants.

Versus

Officer on Special Duty & GIDC,A'bad. : Respondents.

First Appeal No. 1311 of 1982:

Babubhai Naranbhai Patel : Appellant.

Versus

Officer on Special Duty & Anr. : Respondents.

First Appeal Nos. 862 & 863 of 1983 :

Shankarbhai Jamnadas Patel since decd.

through his heirs & L.Rs. : Appellants.

Versus

Officer on Special Duty & Anr. : Respondents.

First Appeal No. 864 of 1983 :

Bakorbbhai Somabhai Patel, since decd.,

through his heirs & L.Rs. and Others. : Appellants.

Versus

Officer on Special Duty & Anr. : Respondents.

First Appeal No. 943 of 1983:

Keshavlal Shankerlal Rami. : Appellant.

Versus

Officer on Special Duty & Anr. : Respondents.

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Appearance:

Advocate for the Appellants: Shri M.I.Patel - in -
First Appeal Nos. 1310 of 1982
& 1311 of 1982.

: Shri K.G. Sheth for Mr. G.H. Amin
- in - First Appeals Nos. 862 of
1983, 863 of 1983 & 864 of 1983.

: Miss. Nayana Panchal for Mr. M.C.
Shah - in - First Appeal No.943 of
1983.

Mr. M.R. Anand, Government Pleader with Shri K.M. Mehta, A.G.P.,
for Respondent No.1 in all the First Appeals.

Mr. M.B. Gandhi, Advocate for Respondent No.2 in all the First
Appeals.

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Coram: B.C. Patel, J. & H.R. Shelat,J.

(10-12-1996)

ORAL JUDGMENT: (Per: B.C. Patel, J.)

This group of appeals is preferred by the appellants, whose lands have been acquired under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') being aggrieved by the award made by the learned Extra Assistant Judge, Nadiad, on 19-4-1982,

2. Mr. M.I. Patel, learned counsel as well as Counsel for the respondents have taken us through the entire record and it appears that the lands under acquisition are in the municipal limits and to be more precise, on the northern boundary of municipal limits of Nadiad. The blocks are divided by Nadiad-Kapadwanj Railway Line. There is Nadiad-Kapadwanj Highway towards the eastern boundary of one block of lands under acquisition. The judicial complex of Nadiad District Court is touching the south block. There is a tar road leading to Manjipura village (now known as Nadiad-Memdabad road) on the western side of the lands under acquisition. It transpires from the record that Jawaharnagar Housing Society has come up near the lands under acquisition on Manjipura road. Lands bearing Survey Nos. 2406 & 2410 are surrounded by the lands acquired/occupied by the housing complex constructed by the Gujarat Housing Board. Land bearing Survey No. 2408 which is touching Survey No. 2410 on the western side and south to Survey No. 2407 and north to Survey No. 2489 abutting on road to Manjipura, is also occupied by the Housing Board where housing blocks are constructed. Survey No. 2436 is also acquired and is separated by the canal. There are other lands bearing four survey numbers situated on the bank of the canal. Thus the block acquired is nearby the two main roads and the judicial complex. There is also existing, Industrial Estate of Gujarat Industrial Development Corporation on the western side of the Nadiad-Kapadwanj line. S.T. Depot, Workshop, and police quarters have been constructed on the highway near the land under acquisition. As observed by the Land Acquisition Officer in his award, the lands under acquisition are agricultural lands. Some plots are situated on the Manjipura road on the western side of the existing flats of the Gujarat Housing Board. It is also pointed out that Survey No. 2344 is situated on the eastern side of the Nadiad-Kapadwanj road and is adjacent to a canal. Survey Nos. 2390, 2391, 2392, 2407, 2409 and 2411 are situated on Nadiad-Manjipura road. Through Survey Nos. 2385, 2388, 2392, 2393 and 2394, railway passes and these plots are thus divided. A part of Survey No. 2386 touches the railway line. Survey No. 2384 is also situated on the railway track and a part of it touches the canal. Rest of the lands are not abutting on the road or on

the railway track. As observed by the Land Acquisition Officer, the lands are situated within the municipal limits of the city of Nadiad and few survey numbers under acquisition are advantageously situated. It is also found that lands of N.A. potentiality are situated within the municipal limits close to District Court, Nadiad, GIDC Industrial Estate and Housing Board flats. Mr. Patel, learned Advocate appearing for the appellants-claimants submitted that this part has not been properly appreciated while determining the price of land to be paid to the claimants.

3. It appears that Notification under Section 4 under the Act was issued on 29th January 1971. However, declaration under the provisions of Section 6 was made on 28th January 1974. That notification which is placed now on the record makes it clear that Survey Nos. 2406, 2408, 2378-A and 2410 of village Nadiad are dropped from acquisition. The witnesses examined on behalf of the appellants have also pointed out the existence of the District Court and the location of the roads. They also pointed out the houses of S.R.P. (State Reserve Police), S.T. Workshop, S.T. Colony, and the Rest House of Mahi Canal. The witnesses on behalf of the appellants have also pointed out the existence of Jawaharnagar Housing Society and Industrial Estate. The witnesses have also pointed out the houses constructed by the Housing Board. It is the claimants' case that there is a railway junction at Nadiad and at the relevant time the population was about 2.5 lakhs and in Nadiad there are several industrial estates.

4. The claimants have claimed that they were cultivating the lands and by growing different crops they used to earn at least Rs. 1,000/- per biga.

5. With a view to point out the sale instances, it is pointed out, that one Lalitaben Naginbhai Patel executed an Agreement to Sale on 30-4-1970 (vide Exh.22) in favour of a co-operative society at the rate of Rs. 1,500/per guntha. That land is Survey No. 2411 and is situated to the north block of the judicial complex and is on Nadiad-Manjipura road. The said plot is just touching Survey No. 2410 which is dropped from acquisition and Survey No. 2409 which is acquired. Mr. Patel pointed out that no doubt the Sale Deeds were executed on 16-1-1976 and on 6-4-1976 vide Exhs. 20 & 21. Another instance which is pointed out is of three survey numbers, being 2485, 2486 and 2493. In the evidence, it is stated that the said lands were acquired and in a reference the price was determined at Rs. 250/- and for that purpose witness produced a certified copy, vide Exh. 23 of one witness, Ishwarbhai. On perusing the record, it appears

that it is not a case of acquisition but the Government decided to grant the lands to GIDC. The letter dated 19th February 1969 indicating the grant of 17 acres and 24 gunthas, is placed on the record, vide Exh. 59. The price of the land is fixed at Rs. 250/- per guntha (Rs.10,000/- per acre). The appellants examined one Rasulbhai Kaji Abdulbhai, vide Exh.77 for indicating that lands admeasuring 88 gunthas bearing Survey No. 2397/1-2 was held by one Manilal Baghabhai and from said Manilal after obtaining permission from the competent authority land is purchased. He has stated that the Agreement to Sale was executed in 1968 fixing the price at Rs.11,000/- including the sum of Rs.500/- for the trees. He stated that the said Manibhai became the owner of the land under the provisions contained in the Bombay Tenancy & Agricultural Lands Act. This witness has stated that he is being paid Rs. 280/- per RA., but his demand is for Rs. 1,000/- per RA.

6. The Reference Court, in Para 32, has held that instance of grant of land to GIDC at the rate of Rs.250/- per guntha, which is a waste land, cannot be considered as a sale instance. The learned Judge, in para 32 has also observed that in Map, Exh. 55 the lands are not noticed. Mr. Patel, therefore, submitted certified copy of the original Map, and as the learned advocates have no objection in placing the said Map on record, we have taken the Map on record. It appears that the Trial Court had no opportunity to have a look at the map of a larger area, but looking to the Map, produced before us it is very clear that the lands referred as 'waste lands' are situated on the western side of the lands under acquisition. Survey No. 2469 is situated on Nadiad-Manjipura road and to its west, there is Survey No. 2468 and on the northern side Survey No.2469 is situated. Just above Survey No. 2469 and to the north, Survey No. 2471 is situated, and on the western boundary, Survey No. 2485 and Survey No. 2486 are situated. After leaving one Survey number on the western boundary, there is Survey No. 2496, and thus the waste lands are not far away from the lands in question. Mr. Patel, learned advocate submitted that as the waste lands are not situated far away from the lands under acquisition but are located nearby the lands under acquisition, and if the Government has transferred the lands at the rate of Rs. 250/- per guntha, then there is no earthly reason why that aspect should not have been taken into consideration. According to him, the Trial Court has seriously erred in not accepting the said piece of evidence as an instance of sale. Mr. Anand as well as Mr. Gandhi submitted that it is not a case of sale, but is a grant of land by the Government to the GIDC, and the Government may fix any price. One has to remember that the GIDC has paid Rs. 250/- per guntha for waste land, while the lands under

acquisition are agricultural lands. The GIDC has thought it to pay Rs. 250/- per guntha for the waste lands.

7. In Para 35 of the award, the Court has considered the evidence of Sale Deeds, one of Survey No. 2411, and another of Survey No. 2397. Mr. Patel, learned Advocate submitted that the Agreement to Sale was executed, vide Exh. 22 on 30th April 1970 and at the relevant time the land was agricultural land and thereafter the application was made for converting the same as non-agricultural land, and according to his submission the price agreed at the relevant time was for the agricultural lands, of course with a condition that the same should be converted as non-agricultural land. Looking to the situation which we have described above, according to Mr. Patel, the learned advocate, the use of the land for the purpose of housing accommodation ought to have been considered in proper perspective. Merely because the land is sold to a co-operative society, it cannot be said that the same cannot be taken into consideration. The learned Judge has observed that before the date of sale, the permission was obtained for non-agricultural use and the transaction was completed on 3-2-1970. Mr. Patel pointed out that transaction was completed in 1976 and in 1970, agreement to sale was executed. The Notification for acquisition of the land in question was issued on 29-1-1971, i.e., within a period of one year from the date of Agreement to Sale. Mr. Patel submitted that the learned Judge has erred in coming to the conclusion that the purchaser would naturally be prepared to pay a high price and therefore the view taken by the learned Judge that the instance of sale should not be considered in determining the market value of the agricultural land, is an erroneous view, and it is submitted by him that it is the case between a willing purchaser and a willing seller and they agreed to sell at the rate of Rs.1,500/- per guntha. On behalf of the respondents, it was contended that the learned Judge has rightly rejected the sale instance. According to the counsel for the respondents the purchase was for construction of residential houses. On the east of the land, there is a Housing Board complex consisting of residential blocks and this land abuts on Nadiad-Manjipura road having a wide frontage and is ideally situated for housing purposes, and therefore the buyer would pay more price. The same price at the same rate may not be awarded in respect of lands which are not adjacent to the lands, but certainly the land situated adjacent to the said land and abutting on the road would naturally attract the same reasoning for a similar price. As the agreement to sale was executed on 30-4-1970 and sale deeds were executed in 1976, it does not mean that the price agreed was not at the rate then prevailing. When NA permission is granted ? is a relevant question, and it is submitted by the

respondents that no exact evidence on this point is placed on record. In the Agreement to Sale and in the Sale Deed, there is some variance and therefore it is submitted that it is not safe to rely on the date on which the permission was granted. According to the respondents, if the NA permission was granted before the Agreement to Sale was executed, the matter would stand on a different footing because the land could be purchased by the purchaser for the purpose of non-agricultural use, but if an agricultural land is to be transferred without N.A. permission, the same cannot be used for the purpose of construction of the houses unless and until the NA permission is granted, and there is no certainty as to when such permission will be granted. Mr. Patel, learned Advocate submitted that in the latter agreements, details of the lands are given and also as to its subsequent conversion into non-agricultural use, for which there is a recital in Exhs. 20 & 21. According to Mr. Patel, from these two agreements N.A. permission had been issued vide letter No. Land/Plot No.A. Vashi. S.R. 10. Vashi.2922 Nadiad (Rural) dated 9-1-1974. He also pointed out that even under the Land Ceiling Act, permission was granted on 21-10-1974 and only thereafter the State Government dropped the said land in question from acquisition. It is true that in Agreement to Sale, there is a vague reference, while in Exhs. 20 & 21, there is a specific reference to the date on which the N.A. permission came to be granted and also the permission under the Land Ceiling Act. No doubt, it was a small plot of land, while the acquisition is for a larger block consisting several survey numbers admeasuring 19 hectares (approximately) of land and therefore the claimants cannot claim the same price.

8. It is required to be noted that the price fetched for a smaller plot cannot form the safe base for valuation of large tracts of land as the two are not comparable properties. The evidence of market-value of sales of small, developed plot is not a safe guide in valuing large extents of land. The price fetched for a small developed plot cannot directly be adopted in valuing large block. If there is evidence to the effect that the lands can be used for building purposes, that would be good selling proposition and that valuation on the basis of the method of a hypothetical lay-out could with justification be adopted, then in valuing such small, laid-out sites. The valuation indicated by sale of comparable small sites in the area at or about the time of the notification would be relevant. The price fetched for small plots cannot directly be applied in a case of large areas, for the reasons that the former reflects the 'retail' price of land and the latter the 'wholesale' price. (See Administrator Genl. of West Bengal vs. Collector, Varanasi - AIR 1988 S.C. 943).

9. From the material placed on record, it is very clear that the lands in question fall within the municipal limits. The topography indicates some of the plots are touching some roads of the city, canal and the railway track. Over and above, the lands are situated touching the judicial complex located in the Nadiad city. Keeping the industrial development, which is also clear from the record, with regard to use of the land, potential value of the lands must be kept in view in fixing the amount of compensation. As held by the Apex Court, the market value of a piece of property, for purposes of Section 23 of the Act, is stated to be the price at which the property changes hands from a willing seller to a willing, but not too anxious a buyer, dealing at arms length. The determination of market-value, as one author put it, is the prediction of an economic event, viz., the price-outcome of a hypothetical sale, expressed in terms of probabilities. Prices fetched for similar lands with similar advantages and potentialities under bonafide transactions of sale at or about the time of the preliminary notification are the usual, and indeed the best, evidences of market-value. Other methods of valuation are resorted to if the evidence of sale of similar lands is not available.

10. It is known to every one that the commodity which the human-being cannot produce is the land. The need for land is day by day increasing very rapidly and particularly in urban areas, the development has increased the price of land fantastically. In the instant case, it appears that in the year 1968, in respect of Survey No. 2397/1-2 admeasuring 88 gunthas, one Manilal Bhaghabhai entered into an agreement with Rasulbhai Haji Abdulbhai for sale of land totalling to Rs. 11,000/(Rs.10,500/for land and Rs.500/- for Mango trees). This land was a new tenure land and yet for 88 gunthas, the price determined was Rs.10,500/-, while the lands belonging to the appellants are old tenure land. If in 1968 the price for 88 gunthas was determined at Rs. 10,500/- and in the month of April 1970 when the agreement came to be executed for another piece of land, the price that was agreed to was Rs.1500/- per guntha. Thus for new tenure land, the price fixed was Rs.125/- per guntha, in 1968, while for old tenure land, the price was Rs. 1500/- per guntha in 1970 and the difference in price we find within a period of two years. Ofcourse location of land is also a relevant factor. Thus the market has shot up fantastically and one cannot forget the aspect of rise in prices of land. Looking to the dates of transaction, it is very clear that there was upward trend in the price of land in the area and the market was not stable. If there was evidence to show that there were no fluctuations in the price between the dates of the preliminary notification and the date of earlier and/or

subsequent transaction, there would have been indication about stable market. The two instances make it clear that there were fluctuations in the prices and there was an upward trend in the price rise. In both the cases, permission was there to transfer the land as contended by the other side, and therefore, according to the respondents, the price then prevailing in 1968 should be taken into consideration for awarding the amount of compensation, and not the price prevalent in 1970 and that too of an instance of a cooperative society.

11. Considering the decision of the Apex Court in the case of Administrator General (Supra), it is clear that when a transaction of small plot is placed before the Court for bases of valuation of a large tract or block of lands, it would not be proper to consider both at par. As the Land Acquisition Officer has indicated the potential value of the land and from the discussion it appears that the Court has not considered the same in proper perspective. It is required to be noted that even for a waste land, the Government has considered it fit to recover Rs.250/- per guntha. From the two instances, it clearly appears that there is sharp or speculative rise in price even before acquisition proceedings could be commenced and that factor itself is indicative of the fact that the people were willing to purchase the lands in that area for development either industrial or housing and that cannot be lost sight of. We are not relying on the price fixed by the Government but it is a factor indicating the use of the land in area and its potentiality. When a large tract of land is acquired, it becomes necessary to consider the deductions for the extent of land required for the formation of roads and other civic amenities; expenses of development of the sites by laying out roads, drains, sewers, water and electricity lines, and the interest on the outlays' for the period of deferment of the realisation of the price; the profits on the venture etc., and the deductions for land required for roads and other developmental expenses, as held by the Apex Court in the case of Administrator General (Supra), can together, come upto as much as 53%, and the Apex Court held that accordingly the price fetched for small plots cannot directly be applied in the case of large areas. But where the value fixed for the large extent of the land worked out to 40% of retail price, the Court held that there was no justification for interference with determination of value acquired as, in the case of such land with potentialities for profitable use, it was necessary to acknowledge and make due allowance for, the possibility that the land might not be applied for the prospective use at all or not so applied within a reasonable time. In the case of Smt. Kausalya Devi Bogra & others vs. Land Acquisition Officer - AIR 1984 S.C. 892, in para 13,

the Apex Court observed as under:-

"13. Two principles relating to the matter of fixation of compensation relevant for the present purpose may be kept in view. When large tracts are acquired, the transaction in respect of small properties do not offer a proper guideline. Therefore, the valuation in transactions in regard to smaller property is not taken as a real basis for determining the compensation for larger tracts of property [see *Prithvi Raj Tanera v. State of Madhya Pradesh* (1977) 2 SCR 633 : (AIR 1977 SC 1560); *Padma Uppal v. State of Punjab*, (1977) 1 SCR 329; (AIR 1977 SC 580)]. In certain other cases this Court indicated that for determining the market value of a large property on the basis of a sale transaction for smaller property, a deduction should be given. In *Special Land Acquisition Officer, Bangalore v. T. Adinarayan Setty* (1959) Suppl (1) SCR 404: (AIR 1959 SC 429), a reduction of 25% was indicated while there are certain other cases where the view is that the reduction should be to the extent of 1/3."

Considering the aforesaid aspects, we are of the view that the Trial Court, while deciding the Reference Applications, has committed an error in not considering the instances. The Trial Court ought to have considered the development potentialities of land. The Trial Court has considered the case of each plot and its location by giving reasons. We are of the view that, looking to the overall circumstances of the case, 30% rise if given to each claimant, ends of justice would be met with. Thus appellants would be entitled to claim 30% of the price awarded already.

12. In the result, the appeals are allowed. The award passed by the Trial Court, is modified to the extent that, instead of the price awarded, 30% enhancement shall be paid and calculating the same, further benefits in accordance with law shall be given to the claimants. Appeals allowed accordingly with no order as to costs.

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